

Crime Scene Photos on Facebook went Too Far!

Posting on social media websites in the “digital age” is something that people do not give much thought to; it has become somewhat of a norm. Employees seldom think that these postings can put their job in jeopardy. Nevertheless, the possible implications arising out of the use of social media are becoming a growing concern in the workplace. Employers are now, more than ever, justified in disciplining employees based on the information that these employees divulge on social media pages. These new methods of communication have created considerable expectations of employees and correlating duties and obligations on their employers. The use of social media by employees is an evolving issue, and employers are often unsure of what steps should be taken when issues surrounding the misuse of social media in the workplace arise.

The most recent arbitration decision on the topic of the use of social media in the workplace serves as a warning to employees about the serious repercussions associated with divulging confidential employment-related information on the internet. It also serves as a guide to employers regarding the circumstances in which the termination of an employee is warranted when employer confidentiality is breached.

In *Credit Valley Hospital v. Canadian Union of Public Employees, Local 3252*, the employer hired Mr. Brathwaite as a part-time Environmental Service Representative. When a patient committed suicide by jumping from a parking garage, Mr. Brathwaite was given the task of assisting in the cleanup. While completing the cleanup duties, Mr. Brathwaite took photos of the scene and posted them on Facebook. Soon thereafter, Mr. Brathwaite was terminated for violating the hospital’s Code of Conduct and breaching patient and corporate confidentiality. The Arbitrator concluded that a breach of confidentiality had occurred and dismissed Mr. Brathwaite’s grievance which alleged that his misconduct warranted a lesser penalty.

Employees are often privy to confidential information. Exposure to confidential information is especially common in hospital settings among health care workers. While safeguarding such confidential information is imperative, doing so in the age of social media is a complex task. An employee’s imprudent use of social media can attract discipline, up to and including termination of employment for cause. In order to ensure that the employer can indeed act upon the misuse, however, employers should have clear and consistent policies which identify the type of information that would

be considered confidential, the conduct that would amount to a breach of confidentiality, and the possible consequences for a breach of confidentiality. In addition, these policies should be updated frequently, and reissued from time to time, including having employees sign their receipt and understanding of the policies. While confidentiality is an implied term and condition of any employment relationship, written policies have the advantage of setting out precisely what confidentiality encompasses within the particular organization, and they are always available as a reference point if employees are unsure what their obligations are. While implementing such policies may not eradicate all inappropriate conduct, it will define an employer's expectations for its employees and provide the employer with much firmer ground to stand on if and when an incident arises.

Please contact e2r Solutions® should you require assistance in implementing confidentiality policies in your workplace.

e2rsolutions.com

70 The Esplanade, Suite 401, Toronto, Ontario M5E 1R2

📞 416-867-3093 📠 416-867-1434 📞 1-866-327-7657

